

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	MB Docket No. 11-169
Basic Service Tier Encryption)	
Compatibility Between Cable Systems and)	PP Docket No. 00-67
Consumer Electronics Equipment)	

COMMENTS OF THE ALLIANCE FOR COMMUNITY MEDIA

I. INTRODUCTION

The Alliance for Community Media (“Alliance”¹) files these comments in response to the Commission's October 24, 2011 Notice of Proposed Rulemaking (“NPRM”) asking whether the Commission should exempt all-digital cable systems from the longstanding rule that bars a cable operator from encrypting the basic service tier.² The Alliance files these comments to call to the Commission’s attention that the NPRM fails to reference the impact encryption of the basic tier could have on public, educational and government (“PEG”) channels and requests that the Commission act to remedy that oversight.

II. CABLE OPERATORS ARE THE PRIMARY, AND PERHAPS ONLY BENEFICIARIES, OF ENCRYPTION

Allowing cable operators to encrypt the basic service tier would result in real and substantial benefits for cable operators as documented in the NPRM.³ The NPRM is not equally

¹ The Alliance for Community Media provides critical support services for the nation’s public, educational and governmental (“PEG”) access channels, and for the primarily volunteer staff that keep these critical local media centers in operation.

² Notice of Proposed Rulemaking, FCC 11-153 (October 14, 2011).

³ The NPRM concludes encryption will at a minimum “...eliminate the need for many service appointments ...” and provide cable operators with enhanced security as “only paid subscribers

clear that the benefits that inure to cable operators must be shared with consumers and programmers on the basic tier, i.e. PEG operations, by ensuring that no additional costs or burdens are borne by consumers or PEG operators. While the Alliance is very concerned with the scope⁴ and impact encryption of the basic tier will have on consumers⁵, it will limit its comments to the concerns the NPRM poses to PEG programmers. The Alliance is also concerned that the Commission has underestimated the number of set-top boxes required of institutional subscribers, a high percentage of which are PEG viewers.⁶

are able to access the service by authorizing and deauthorizing CableCARDs....” NPRM ¶ 5. Further, the NPRM makes clear that encryption would not be mandated, but would be an elective decision by the individual cable operator. NPRM ¶ 14.

⁴ See NPRM at ¶¶ 5, 13 n.60. A recent lawsuit argued that in Michigan alone, up to 400,000 subscribers could not afford to pay for a converter box. See Charles B. Goldfarb, *Public, Educational, and Governmental (PEG) Access Cable Television Channels: Issues for Congress*, Congressional Research Service, at 18 (Oct. 7, 2011). The NPRM, at ¶ 3, notes that only 77% of subscribers have even one *digital* set top box or other CableCARD device.

⁵ For example the Commission’s NPRM tentatively concludes “that it is appropriate to allow basic service tier encryption for all-digital cable systems, subject to certain measures intended to ameliorate any potential harm to consumers in the short run.” (NPRM ¶8, emphasis provided.) See also NPRM ¶ 12 “We therefore propose that cable operators that choose to encrypt the basic service tier in their service area provide to subscribers, without charge for a *limited time*, devices that can decrypt the basic service tier as described above.” (emphasis added) and NPRM at ¶ 14

⁶ The NPRM does not appear to address basic tier-PEG viewers in government institutions such as schools and public buildings. Many local governments, and even some states, have franchises that require the cable operator to provide free services to schools and government buildings. The Commission does not address the impact on such institutional viewers, who many times are viewers of PEG programming. Where schools and other public buildings receive basic service under a cable franchise, failure to protect such consumers could force local governments to lease converter boxes (often multiple units) from the operators or forgo the showing of PEG programming in those settings. Because such costs are often not addressed in existing franchise agreements, Commission action could impose sizable costs on schools and local communities. The Alliance further understands that converter boxes might not be the only issue implicated by encryption. Recently when Time Warner moved its system to a digital format in certain South Texas communities, schools with old wiring could not support the higher frequencies that digital, and we assume encrypted transmissions, require. Should the encryption process result in such a higher or different frequency transmission—or a similar technical issue—such that not all institutional users can access the programming even with a “free box,” the cable operator should be required to make such users whole.

III. THE NEED TO PROTECT PEG OPERATIONS

Despite a congressional mandate that PEG programming as part of the basic tier of service provide communities the ability to reach their residents through civic, governmental, educational and other valuable informational local programming, the NPRM is silent as to the possible impact encryption of the basic tier could have on PEG programming. Should the Commission provide the cable industry the relief it seeks in this proceeding, it must ensure nothing less than the continued uninterrupted ability of PEG access programming to fulfill the vital public purpose it serves.

The Commission may do so by ensuring PEG channel programming continues to be as accessible and functional for all viewers on a cable system after encryption as it was before. The Commission must act therefore to ensure that PEG programming is not adversely affected by encryption.

The NPRM asks “whether the commission should include IP video and other non-traditional cable video services in its definition of an all-digital system.”⁷ First, the FCC should rule that AT&T’s U-verse is a cable system.⁸ Second, it should make clear in this docket that no system should receive the benefits of this rule unless it fulfills *all* the requirements of a cable system, including provision of PEG on same basis as other channels. The Commission should also clarify that a cable operator cannot charge a PEG operator to have its PEG programming encrypted.

⁷ NPRM at ¶ 9.

⁸ *Petition for Declaratory Ruling of Alliance for Community Media, et al.*, MB Docket 09-13 (Jan. 30, 2009).

IV. CONCLUSION

Before it allows cable operators to encrypt the basic service tier on all-digital systems, the Commission should take steps to ensure that PEG operations and consumers—including institutional users—are protected from any adverse effects arising out of such a change for the long term.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Strobel', written over a horizontal line.

Sylvia L. Strobel
Executive Director
ALLIANCE FOR COMMUNITY MEDIA
1760 Old Meadow Road, Suite 500
McLean, VA 22102
(703) 506-2889

51043.00001\7044033.2